88-1498

Supreme Court, U.S.
FILED
MAR 2 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1988

BOX OFFICE, INC., a Missouri Corporation, and DAVID JOHN HECKLER,

Petitioners,

v.

STATE OF MISSOURI, ex rel., WILLIAM L. WEBSTER, Attorney General,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

STANLEY FLEISHMAN*
BARRY A. FISHER
FLEISHMAN, FISHER & MOEST
2049 Century Park East, Suite 3160
Los Angeles, California 90067
(213) 557-1077

LEONARD FRANKEL
MAZUR & RABEN
100 South Brentwood
St. Louis, Missouri 63105
(314) 726-0400

Counsel for Petitioners

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether petitioners have a right protected by the First and Fourteenth Amendments to the Constitution to conduct the particular charitable fundraising solicitation involved in this case.

2. Whether Missouri's Merchandizing Practices Act, Mo. Rev. Stat. § 404.020(1), on its face and as construed and applied denies petitioners freedom of speech and press and due process of law in violation of the First and Fourteenth Amendments to the Constitution and subjects petitioners to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the Constitution.

3. Whether the Missouri Supreme Court's denial of petitioners' petition for writ of prohibition is final within the meaning of 28 U.S.C. § 1259.

LIST OF PARTIES

In addition to the parties named in the caption, the Vietnam Veterans Leadership Program has an interest in the outcome of the litigation.

Petitioner Box Office, Inc. has a parent company, North American Telemarketing Corporation, a California corporation. Petitioner Box Office, Inc. has no subsidiary, or affiliate, to list pursuant to Rule 28.1.

TOPICAL INDEX

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES 3

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 8

1. Petitioners' Charitable Solicitation is Protected by the First and Fourteenth Amendments 8

2. Missouri's Merchandizing Practices Act on its Face and as Construed and Applied Denies Petitioners Freedom of Speech and Press and Due Process of Law in Violation of the First and Fourteenth Amendments and Subjects Petitioners to Cruel and Unusual Punishment in Violation of the Eighth and Fourteenth Amendments 12

3. The Missouri Supreme Court's Denial of Petitioners' Petition for Writ of Prohibition is Final Within the Meaning of 28 U.S.C. § 1259..... 14

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505 (1986) 3, 12, 13

Baggett v. Bullitt, 377 U.S. 360 (1964) 13

Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485 (1984) 10, 11, 12

Chaplisky v. New Hampshire, 315 U.S. 568 (1942) 11

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) 3, 16

Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974) 15

NAACP v. Button, 371 U.S. 415 (1963) 8

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 8, 10, 14

Riley v. National Federation of the Blind, 108 S. Ct. 2667 (1988) 2, 7, 8, 9, 14, 16

Sappenfield v. Indiana, No. 87-614 February 21, 1989 ..3, 16

Secretary of State of Maryland v. Joseph H. Munson, Co., 467 U.S. 947 (1984) 2, 7, 14, 16

Smith v. Goguen, 415 U.S. 566 (1974) 14

State ex rel. Danforth v. Independence Dodge, Inc., 494 S.W. 2nd 368 (Mo. App. 1973) 13

Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980) 2, 7, 8, 16

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

28 U.S.C. § 1254(1) 3

28 U.S.C. § 1257 3

28 U.S.C. § 1259 14

Merchandizing Practices Act, Mo. Rev. Stat. § 407.020(1) (Vernon Supp. 1988) 2, 4

First Amendment to the United States Constitution 3, 8, 10, 11, 13, 15

Eighth Amendment to the United States Constitution 4, 12, 14

Fourteenth Amendment to the United States Constitution 3, 4, 8, 12, 13, 15

No. _____

In The

Supreme Court of the United States

October Term, 1988

BOX OFFICE, INC., a Missouri Corporation,
and DAVID JOHN HECKLER,

Petitioners,

v.

STATE OF MISSOURI, ex rel.,
WILLIAM L. WEBSTER, Attorney General,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

Petitioners Box Office, Inc., and David John Heckler respectfully pray that a writ of certiorari issued to review the order of the Supreme Court of Missouri denying petitioners' petition for writ of prohibition, filed February 14, 1989.

OPINIONS BELOW

The order of the Circuit Court of the County of St. Louis, Missouri, filed November 2, 1988, denying petitioners' motion to dismiss in the cause, styled *State of*

Missouri ex rel. William L. Webster, Attorney General v. David John Heckler, dba the Dajeck Company and Box Office, Inc., is unreported and appears as Appendix A. The order of the Missouri Court of Appeals, Eastern District filed December 15, 1988, denying petitioners' petition for writ of prohibition is unreported and appears as Appendix B. The order of the Missouri Supreme Court dated February 14, 1989, denying petitioners' petition for writ of prohibition is unreported and appears as Appendix C.

JURISDICTION

Respondent, the Attorney General of Missouri, filed an action against petitioners asserting that a particular charitable fundraising campaign on behalf of the Vietnam Veterans Leadership Program, a not-for-profit organization, constitutes misrepresentations or fraudulent omissions of material facts in violation of the Merchandizing Practices Act, Mo. Rev. Stat. § 407.020(1) (Vernon Supp. 1988). The Attorney General sought an injunction restraining petitioners from making the particular solicitation and seeking draconian monetary relief, including but not limited to $1,000 for each telephone call made by petitioners in the fundraising campaign.

Petitioners, relying on *Riley v. National Federation of the Blind*, 108 S. Ct. 2667 (1988); *Secretary of State of Maryland v. Joseph H. Munson, Co.*, 467 U.S. 947 (1984); and *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980) made a motion in the Circuit

Court to dismiss the action, alleging that their communication was protected by the First and Fourteenth Amendments. When the Circuit Court denied the motion they filed a petition for a writ of prohibition in the Missouri Court of Appeals, Eastern District, asserting that their communication was protected by the First and Fourteenth Amendments. By order dated December 15, 1988 the said petition was denied. Petitioners then filed a petition for writ of prohibition in the Missouri Supreme Court again claiming that their speech was protected by the First and Fourteenth Amendments. On February 14, 1989, the Missouri Supreme Court denied the petition.

The Missouri Supreme Court was required to grant the petition for writ of prohibition because applying the clear and convincing evidentiary standard mandated by the First Amendment, a jury could find only that petitioner's speech is constitutionally protected. *See Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505, 2415 (1986). Accordingly, the Missouri Supreme Court's decision is final within the meaning of 28 U.S.C. § 1257 and the Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). *Sappenfield v. Indiana*, No. 87-614 February 21, 1989; *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 483 (1975).

PERTINENT CONSTITUTIONAL PROVISION AND STATUTES

1. The First Amendment to the United States Constitution provides in relevant part:

> Congress shall make no law . . . abridging the freedom of speech.

2. The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

3. The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No state shall make or enforce any law which shall . . . deprive any person of . . . liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. Missouri's Merchandizing Practices Act, Mo. Rev. Stat. § 407.020(1) (Vernon Supp. 1988) provides in relevant part:

> The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with . . . the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the . . . solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri of the fact that the Attorney General has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

STATEMENT OF THE CASE

On November 5, 1987, petitioner Box Office, Inc. entered into a written agreement with the Vietnam Veterans Leadership Program to conduct a charitable fundraising solicitation on behalf of the organization. Petitioner David John Heckler dba "The Dajeck Company" worked on the campaign as an independent contractor. The undisputed record shows that Vietnam Veterans leadership Program is a non-profit organization; that it has filed a certificate of incorporation as a nonprofit corporation with the Secretary of State of Missouri; that due to a lack of available funds the organization staff was cut from 8 to 2 in recent years; and that because of the relatively small size of the organization it is difficult to raise the funds necessary to achieve its goals, without the assistance of a professional fundraiser.

The organization entered into the contract with petitioners to raise the funds needed to function effectively. To comply with the provisions of Missouri's Charitable Solicitations Law, the organization has filed a registration statement with the attorney general of the State of Missouri.

Petitioners' campaign on behalf of the Vietnam Veterans Leadership Program is basically the same as two previous campaigns they had conducted for the organization: a telephone solicitation requesting people to purchase tickets for an annual variety show hosted by the organization for the area's special and less fortunate children. The organization received more than $17,000.00 from each of the two prior campaigns. As a result of these campaigns the organization became better known and

some individuals became active volunteers for the group. Without petitioners help the organization would be severely hampered in its ability to carry out its functions and to attract volunteers.

The variety show campaign is the organization's most important fundraising and organizational event. The executive director of the organization is familiar with the solicitation made on its behalf and has attended the previous variety shows it hosted. He found both the solicitation and the show appropriate for the organization.

The telephone solicitation respondent attacks goes as follows:

> "Hello, Mr. and Mrs. ___, this is (solicitor's name) calling for the Vietnam Veteran's Leadership Program. How are you doing this evening? Great. (Respond accordingly) Glad to hear it. The reason for my calling, Mr. ___, is that the Veterans are hosting The Annual Variety Show for the area's special and less fortunate children and we have a real easy way for you to help. What we do is mail to you the ticket and all you have to do is return it along with your check and the veterans will see that the ticket gets out to one of the children's organizations on your behalf. So we're hoping we can count on you to sponsor the children as your guests this year, okay? . . . you can sponsor 21 children for $79.29 or 14 children for $52.86 . . . Our basic and most popular ticket sponsors seven children for $26.43. If you could help with that ticket it would be that many less children that we have to worry about leaving behind. Could we count on you for this support?
>
> . . . Okay, we'll mail your ticket and brochure tonight, when you receive it in the mail, please take a few moments to make out your check for ___ payable

> to the Vietnam Veterans Leadership Program and send it back because we have a lot of preparations to make and we cannot wait until we receive your check. Will you do tha[t] for me Mr. and Mrs.___ Once again on behalf of the children and the Vietnam Veterans Leadership Program, thanks.
>
> Show date, June 30, 1988. Times: 2:00, 4:30 and 7:00. Machinist's Hall, 11365 St. Charles Rock Road, Bridgeton.

On or about December 7, 1988, respondent filed the action herein to restrain petitioners from making the aforesaid communication and seeking a judgment ordering petitioner to pay to the State of Missouri a civil penalty of $1,000 for each telephone call made by petitioner, in addition to the penalties.

Petitioners filed a motion in the Circuit Court to dismiss contending that the solicitation made on behalf of Vietnam Veterans Leadership Program is constitutionally protected and that Missouri's Merchandizing Practices Act, as applied to them, violates the First and Fourteenth Amendments. Petitioners demonstrated in detail that the Court's decisions in *Riley, Joseph H. Munson,* and *Village of Schaumburg* fully protect the charitable solicitation at bar. Nevertheless, on November 2, 1988, the Circuit Court denied petitioners' motion to dismiss. Petitioners' petitions for a writ of prohibition filed with the Missouri Court of Appeals, Eastern District, and subsequently with the Missouri Supreme Court were both denied.

REASONS FOR GRANTING THE WRIT

1. Petitioners' Charitable Solicitation is Protected by the First and Fourteenth Amendments.

A. Petitioners' solicitation on behalf of the Vietnam Veterans Leadership Program, taken as a whole, constitutes "fully protected expression." *Riley v. National Federation of the Blind, supra,* 108 S. Ct. at 2677. Respondent's claim that petitioners' speech is not protected stems from its belief that petitioners should not say they are "calling for the Vietnam Veterans Leadership Program," but should instead say they are calling on behalf of petitioners. *Riley,* however made clear that government may not substitute its judgment as to how best to speak for that of speakers and listeners. *Id.* at 2674-75. The Court explicitly held this "settled rule" is fully as applicable to professional fundraisers' campaigns for charity as it is to other forms of protected speech. *Id.* at 2675. This autonomy for speakers to frame their messages as they, not the government, best see fit is central to the First Amendment. Because freedom of expression needs breathing space to survive "government may regulate in the area only with narrow specificity." *NAACP v. Button,* 371 U.S. 415, 433, 83 S. Ct. 328, 338 (1963); *see Village of Schaumburg v. Citizens for a Better Environment, supra,* 444 U.S. at 637. The Court has recognized that erroneous statement is inevitable in open discussion, and that it too "must be protected." *New York Times Co. v. Sullivan,* 376 U.S. 254, 271 (1964).

The Attorney General's misunderstanding of *Riley* is reflected in the complaints first allegation of a statutory violation. It reads:

> A. Defendants contacted Missouri residents stating that Defendants were "calling for the Vietnam Veterans Leadership Program. . . ."
>
> B. In actuality, the solicitors were employed by and were agents of Box Office, Inc. and David Heckler d/b/a/ The Dajeck Company, and were calling on behalf of those organizations.

This allegation can mean either or both of two things: (1) it was a material falsehood for petitioners to say that they were "calling for" the Vietnam Veterans leadership program; (2) it was a material omission for solicitors not to say in each telephone contact that they "were employed by and were agents of" petitioners. *Riley* conclusively establishes that neither of these theories can prevail.

Riley underscores that theory (1) is invalid. When a professional fundraiser calls on behalf of a charity it clearly is "calling for" that charity. *See Riley*, 108 S. Ct. at 2676 n.8 ("Fining the fundraiser based upon its speech for the charity has an obvious and direct relation to the charity's speech.").

Riley also demonstrates that theory (2) cannot stand. While the Court suggested in dictum in a footnote that a state might be able to "require a fundraiser to disclose unambiguously his or her professional status," 108 S. Ct. at 2679 n.11, it did not for a minute suggest that, independent of any statutory requirement, a state could penalize a fundraiser for not making such a statement. In the absence of a statutory requirement the state cannot support its assertion that the omission of this information,

and similar information[1] removes petitioners' speech from the protection of the First Amendment. Indeed, Justice Scalia, concurring, stated that in his opinion even this requirement could not be imposed. *Id.* at 2681.

B. In cases raising First Amendment issues the Court has repeatedly held that an appellate court has an obligation to "make an independent examination of the whole record" in order to make sure that "the judgment does not constitute a forbidden intrusion in the field of free expression." *New York Times Co. v. Sullivan, supra,* 376 U.S. at 284-286; *Bose Corp. v. Consumers Union of U.S., Inc.,* 466 U.S. 485 (1984). When the standard governing the decision of a particular case is provided by the Constitution, this Court's role in marking out the limits of the standard through the process of case by case adjudication is of special importance. "This process has been vitally important in cases involving restrictions on the freedom of speech protected by the First Amendment, particularly in those cases in which it is contended that the communication in issue is within one of the few classes of 'unprotected' speech." *Bose Corp., supra,* 466 U.S. at 503. The Court has consistently emphasized that the First Amendment presupposes that the freedom to speak one's mind is not only an aspect of individual liberty – and thus a good unto itself – but also is essential to the common quest for truth and the vitality of society as a whole. *Id.* at 503-504.

---

[1] The petition for writ of prohibition filed with the Missouri Supreme Court demonstrated that all of the respondent's allegations against petitioners were of like character.

Petitioners understand, of course, that there are categories of communication and certain special utterances to which the broad protection of the First Amendment does not extend because they "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth, that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplisky v. New Hampshire,* 315 U.S. 568, 572 (1942).

Fraud like libel, fighting words, incitement to riot, obscenity, and child pornography have been held to be outside the scope of freedom of speech. "In such cases, the Court has regularly conducted an independent review of the record, both to be sure that the speech in question actually falls within the unprotected category and to confine the perimeters of any unprotected category within acceptable narrow limits in an effort to insure that protected expression will not be inhibited." *Bose Corp., supra,* at 505. This is so because providing triers of fact with a general description of the type of communication whose content is unworthy of protection has not, in and of itself, served sufficiently to narrow the category, nor served to eliminate the danger that decisions by triers of fact may inhibit the expression of protected ideas. Ibid.

The requirement that the Court determine for itself whether a particular communication is protected or unprotected "is a rule of federal constitutional law," and "reflects a deeply held conviction that judges – and particularly Members of this Court – must exercise such review in order to preserve the precious liberties established and ordained by the Constitution." *Bose Corp.* at 510-511.

In *Bose Corp.* the Court, as expositor of the Constitution, independently examined the challenged speech to determine whether it crossed the constitutional threshold that bars the entry of a libel judgment that is not supported by clear and convincing proof of actual malice. The Court observed that the statement before it "represents the sort of inaccuracy that is commonplace in the forum of robust debate," adding that "erroneous statement is inevitable in free debate and . . . must be protected if the freedoms of expression are to have the breathing space that they need . . . to survive." *Id.* at 513 (inner quotes and citation omitted).

These principles apply to this case. The Missouri Supreme Court had before it the full text of petitioners' speech together with respondent's claim that the speech was unprotected. Accordingly, there was no need for a trial since the Missouri Supreme Court had before it all that was necessary to find that petitioners' speech is constitutionally protected. *See Anderson v. Liberty Lobby, Inc., supra,* 106 S. Ct. at 2514.

2. Missouri's Merchandizing Practices Act on its Face and as Construed and Applied Denies Petitioners Freedom of Speech and Press and Due Process of Law in Violation of the First and Fourteenth Amendments and Subjects Petitioners to Cruel and Unusual Punishment in Violation of the Eighth and Fourteenth Amendments.

On its face Missouri's Merchandizing Practices Act applies to speech to which plenary protection attaches, to wit, "the solicitation of any funds for any charitable purpose." The Act makes it unlawful to employ any

"deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with . . . the solicitation of any funds for any charitable purpose. . . ." None of the terms describing the prohibited activities are defined in the Act, and because the Act has been interpreted to be more restrictive than common law principles of fraud, there are no guidelines to be found in the case law interpreting the Act. *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W. 2nd 368 (Mo. App. 1973).

When speech is at stake, the First Amendment "demands a greater degree of specificity" than would otherwise be required under the due process clause of the Fourteenth Amendment. *Smith v. Goguen*, 415 U.S. 566, 573 (1974). For these instances not only implicate the question of fair notice of what is permitted and what is forbidden, but pose the danger that protected speech will, contrary to the values protected by the First Amendment, be cut off. "Those . . . sensitive to the perils posed by . . . indefinite language, avoid the risk . . . only by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited. . . ." *Baggett v. Bullitt*, 377 U.S. 360, 373 (1964) (footnote omitted).

The indefinite language of the Act has resulted in the State construing the Act to apply to petitioners' constitutionally protected speech. The Act is therefore on its face and as construed violative of the First and Fourteenth Amendments guaranteeing freedom of speech. It also subjects petitioners to cruel and unusual punishment.

The Attorney General requested the Court to enjoin petitioners from engaging in the particular fundraising campaign set forth ante at 6-7. Additionally the Attorney General prayed that petitioners be ordered to pay to the State of Missouri a civil penalty of $1,000 for each fundraising call made by petitioners; that petitioners be ordered to pay to the State an amount to adequately serve as restitution to compensate any person who has suffered ascertainable loss as a result of any of the communications of petitioners; that petitioners be ordered to pay an additional ten percent of the restitution amount to be paid into the State Treasury to the credit of the Merchandizing Practices Revolving Fund; and that petitioners be ordered to pay to the State all expenses incurred by the State in the investigation and prosecution of the case, including reasonable attorneys fees.

Because the Act as construed subjects petitioners to potential damages running into the millions of dollars, the Act as construed necessarily chills speech "in direct contravention of the First Amendment's dictates." *See Munson, supra* 467 at 969; *New York Times, Co. v. Sullivan, supra* 376 U.S. at 279; *Riley, supra* at 2676. Additionally, the Act as construed violates the Eighth Amendment because it constitutes cruel and unusual punishment.

3. The Missouri Supreme Court's Denial of Petitioners' Petition for Writ of Prohibition is Final Within the Meaning of 28 U.S.C. § 1259.

In *Cox Broadcasting Corporation v. Cohn, supra,* the father of a deceased rape victim brought an action against a broadcasting company to recover damages for invasion of the father's right of privacy, which invasion allegedly

occurred when the company in violation of a Georgia statute, identified the victim during a television coverage of the trial of the rapists. The Trial Court upheld the statute and granted the father's motion for summary judgment. The Georgia Supreme Court agreed that the statute was not in conflict with the First Amendment, but reversed the grant of summary judgment, and remanded the case for further proceedings. This Court reached the merits and reversed, although the judgment was not final.

The Court concluded that it had jurisdiction to review the Georgia Supreme Court's judgment rejecting the challenge under the First and Fourteenth Amendments because the judgment was "plainly final on the federal issue and is not subject to further review in the state courts." 420 U.S. at 485. The Court explained that the broadcasting company would be liable for damages if the elements of the state cause of action were proved, and that while the company might prevail at trial on non-federal grounds, "there should be no trial at all," if the Georgia Supreme Court erroneously upheld the statute. The Court stated that delaying final decision of the First Amendment claim until after trial would leave unanswered an important question of freedom of the press under the First Amendment," an uneasy and unsettled constitutional posture [that] could only further harm the operation of a free press." *Id.* at 486, 95 S. Ct. at 1041 (quoting *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 247 n.6 (1974).

The Court stated:

> [I]f we now hold that the First and Fourteenth Amendments bars civil liability for broadcasting the

> victim's name, this litigation ends. Given these factors – that the litigation could be terminated by our decision on the merits and that a failure to decide the question now will leave the press in Georgia operating in the shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt – we find that reaching the merits is consistent with the pragmatic approach that we have followed in the past in determining finality.

Id. at 487. *See also, Sappenfield v. Indiana, supra* ("Adjudicating the proper scope of First Amendment Protections has often been recognized by this Court as a 'federal policy' that merits application of an exception to the general finality rule.")

In light of *Sappenfield* and *Cox Broadcasting Corp.*, the Court has jurisdiction to review the judgment of the Missouri Supreme Court, rejecting petitioners' challenge under the First and Fourteenth Amendments to the state law authorizing injunctive and damage suits against a professional fundraiser for a charitable organization for making a solicitation that is protected under *Riley, Munson* and *Schaumburg*.

CONCLUSION

For the aforesaid reason, the petition for writ of certiorari should be granted.

Dated: February 28, 1989

STANLEY FLEISHMAN*
BARRY A. FISHER
FLEISHMAN, FISHER & MOEST
2049 Century Park East, Suite 3160
Los Angeles, California 90067
(213) 557-1077

LEONARD FRANKEL
MAZUR & RABEN
100 South Brentwood
St. Louis, Missouri 63105
(314) 726-0400

Counsel for Petitioners

*Counsel of Record

APPENDIX A

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

21st JUDICIAL CIRCUIT

State of Missouri PLAINTIFF VS David J. Heckler et al DEFENDANT	DATE Nov 2, 1988 CASE NUMBER 570822 TEAM/DIVISION A

Joint Motion to Dismiss of Defendants called, heard and overruled.

APPENDIX B

(SEAL)

In the Missouri Court of Appeals
Eastern District

STATE OF MISSOURI, EX REL. BOX OFFICE, INCORPORATED, and DAVID JOHN HECKLER, d/b/a THE DAJECK COMPANY, Relators,	)	No. 55825
	)	Writ from the Circuit Court of St. Louis County, No. 570822
vs.	)	
THE HONORABLE ROBERT L. CAMPBELL, Respondent.	)	

O R D E R

Relators have filed a Petition for Writ of Prohibition along with Suggestions in Support and Exhibits. Respondent has filed Suggestions in Opposition.

Being duly advised in the premises, the Court *DENIES* Relators' Petition.

SO ORDERED.

DATED: December 15th, 1988

/s/ Harold Satz
Harold L. Satz,
Presiding Judge
Writ Division III
Missouri Court of
Appeals
Eastern District

cc: Hon. Robert L. Campbell
Leonard Frankel
Michael H. Musich
Donald Wolff
Erich V. Vieth

APPENDIX C

CORRECTED MANDATE

No. 71276

In the Supreme Court of Missouri

January *Session*, 1989

State ex rel. Box Office, Incorporated and David John Heckler, d/b/a The Dajeck Company, Relators,

vs. PROHIBITION

Honorable Robert L. Campbell, Judge, Circuit Court, St. Louis County, Respondent.

Now at this day, on consideration of the petition for a writ of prohibition *herein to the said respondent ___, it is ordered by the court here that the said petition be, and the same is hereby denied.*

Respondent's request for attorney's fees denied.

STATE OF MISSOURI – Sct.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January *Session thereof, 1989, and on the* 14th *day of* February *1989, in the above entitled cause.*

Given under my hand and seal of said Court, at the City of Jefferson this 17th *day of* February 1989.

/s/ Thomas F. Simon *Clerk*

_____ *D.C.*